

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA *ex rel.*  
JOSEPH SEIKEL and TERENCE SEIKEL,

Plaintiffs,

v.

Civil Action No. 1:23-cv-00001  
Honorable Thomas S. Kleeh

DAVID B. ALVAREZ; APPLIED  
CONSTRUCTION SOLUTIONS, INC.;  
ENERGY TRANSPORTATION, LLC;  
ENERGY RESOURCE GROUP, LLC;  
ET360, LLC; BEAR CONTRACTING, LLC;  
BEAR UTILITIES, LLC; JASON P.  
HENDERSON; and JOHN DOES NOS. 1-50,  
FICTITIOUS NAMES;

Defendants.

**HENDERSON DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT**

Defendants Jason P. Henderson, Energy Resource Group, LLC, and ET360, LLC (collectively, the “Henderson Defendants”), by and through counsel, move this Court, pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6), to dismiss the Amended Complaint for False Claims Act Violations Under 31 U.S.C. §§ 3729–3733 filed by Joseph Seikel and Terence Seikel (collectively, the “Seikels”). The Court should dismiss the Seikels’ amended complaint for the following reasons. First, the Seikels are not qualified to bring this *qui tam* action as relators. Second, the Seikels fail to allege fraud with the requisite particularity pursuant to Federal Rule of Civil Procedure 9(b). Third, the Seikels fail to state a claim under the False Claims Act upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

A memorandum in support of this motion is submitted herewith.

WHEREFORE, Defendants Jason P. Henderson, Energy Resource Group, LLC, and ET360, LLC respectfully request the Court to grant their motion and enter an order dismissing the amended complaint with prejudice.

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*Counsel for Defendants Jason P.  
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and ET360, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of May 2023, a true and correct copy of the foregoing “Henderson Defendants’ Motion to Dismiss Amended Complaint” was electronically filed and served through the Court’s CM/ECF system on counsel of record listed as:

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